

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

JAIME GOLDTOOTH, as Guardian and
Conservator for the Estate of Cody
Goldtooth, and ZURICH AMERICAN
INSURANCE COMPANY,

Plaintiffs,

v.

THE WESTERN SUGAR COOPERATIVE,

Defendant and Third-
Party Plaintiff,

v.

DSI MECHANICAL, LLC,

Third-Party Defendant.

8:20CV113

**ORDER ON
DESIGNATION
OBJECTIONS**

A jury trial in this matter is scheduled to begin Monday, January 13, 2025. Now before the Court are objections to deposition designations (Filing Nos. 307, 310, 312, 318, 320) submitted by plaintiff Jaime Goldtooth (“Goldtooth”), defendant and third-party plaintiff The Western Sugar Cooperative (“Western Sugar”), and third-party defendant DSI Mechanical, LLC (“DSI”). The Court’s rulings on the objections submitted thus far¹ are as follows.

¹As previously discussed with the parties, the Court will reserve its ruling on any objections to Goldtooth’s designations of the trial deposition of Dr. Paul Janda for the time being.

A. John Avar**i. DSI's Designations**

Page/Line	Objections – Goldtooth	Objections – Western Sugar	Ruling
5:22-23			
7:17-8:3			
20:1-15			
20:21-22			
21:13-22:24			
23:14-24:5		23:21-22, 25 – No personal knowledge; improper lay opinion; opinion on a legal conclusion; relevance.	Overruled
25:23-28:7			
32:2-33:1			
33:14-34:16			
35:7-19		35:7-8, 10-11, 13-14 – Argumentative; improper lay opinion; opinion on a legal conclusion; relevance.	Overruled
36:19-37:5		36:19-21, 23-24 – Improper lay opinion; opinion on a legal conclusion; relevance.	Overruled
38:6-41:15		39:20-25 – Relevance. 40:2-41:15; 41:21-42:5 – Relevance. At the time of his injury, Goldtooth was not engaged in work that required a permit (hot work, confined space, lock out/tag out).	Overruled Overruled
41:21-42:5			
42:21-45:6			
46:22-47:15		46:22-23 – Relevance; improper lay opinion; opinion on a legal conclusion. 46:24-47:1 – Argumentative; improper lay opinion; opinion on a legal conclusion; relevance (no claim that Western Sugar delegated responsibility for safety to DSI).	Overruled Overruled
47:19-48:20		47:19-21, 25 – Argumentative; improper lay opinion; opinion on a legal conclusion.	Overruled
56:18-58:14			
64:16-65:23		65:15-16 – No personal knowledge, speculation.	Sustained
66:19-67:12			

ii. Western Sugar's Counter-designations

Page/Line	Objections – Goldtooth	Objections – DSI	Ruling
20:16-21			
20:23-21:12			
24:6-25:9			
35:21-36:18			
45:24-46:1		Asked and answered at 45:4-6.	Overruled
47:16-18			
53:2-9			
55:9-56:17			

B. Dave Devore

i. Goldtooth's Designations

Page/Line	Objections – Western Sugar	Objections – DSI	Ruling
8:15-17			
11:23-12:17			
12:23-15:6			
15:11-24			
16:3-16			
20:4-20	Relevance.		Overruled
20:25-21:2			
21:3-22:11			
22:24-23:3			
23:18-24:7			
24:13-15			
25:22-26:23			
30:18-23	30:18-19, 22 – Relevance, 403, financial status of a party. See Motion in Limine to exclude evidence of project budget. (Filing # 255 and 256)		Sustained
31:11-20			
32:1-7			
38:6-20	Relevance, 403, 404.		Overruled
38:24-40:6			
40:14-21			
40:22-41:16			
41:22-42:5			
45:2-20	Relevance.		Overruled
46:1-47:1	Relevance.		Overruled
51:2-20	Relevance.		Overruled

Page/Line	Objections – Western Sugar	Objections – DSI	Ruling
56:19-57:17			
59:8-12			
61:15-62:4	Relevance, 403, hearsay, settlement. See Motion in Limine to exclude evidence of OSHA citations, investigation, and settlement (Filing # 255 and 256).		Sustained
63:6-15			
64:12-66:1			
66:23-67:25			
70:23-71:9			
72:2-11			
75:10-18			
75:19-76:4			
77:20-78:13			
78:14-79:5			
83:6-85:4	Relevance, 403, hearsay, settlement. See Motion in Limine to exclude evidence of OSHA citations, investigation, and settlement (Filing # 255 and 256).		Sustained
85:15-86:11	85:22-86:11 – Relevance, 403, hearsay, settlement. See Motion in Limine to exclude evidence of OSHA citations, investigation, and settlement (Filing # 255 and 256).		Sustained
87:12-20			
88:10-22	88:10-15, 19-21 – Improper opinion regarding a legal conclusion.		Overruled
90:25-91:10	91:4-6 – Misstates standard and would impose strict liability, improper opinion regarding a legal conclusion.		Sustained
92:8-11			
92:12-20	Relevance, 403, hearsay, settlement. See Motion in Limine to exclude evidence of OSHA citations, investigation, and settlement (Filing # 255 and 256).		Sustained
93:14-94:2			
96:11-97:3	Relevance, 403, hearsay, settlement. See Motion in		Sustained

Page/Line	Objections – Western Sugar	Objections – DSI	Ruling
	Limine to exclude evidence of OSHA citations, investigation, and settlement (Filing # 255 and 256).		
98:20-25			
99:24-100:19	Improper opinion regarding a legal conclusion.		Overruled
100:20-25			
104:16-105:5			
111:11-112:4			
113:4-6			
113:11-15			
114:20-115:2			
117:14-118:3			
119:5-11			
122:23-123:6			
123:7-13			
127:14-18			
131:7-20			
132:2-18			
139:11-22			
143:23-144:11	Relevance, 403. See Motion in Limine to exclude evidence of OSHA citations, investigation, and settlement (Filing # 255 and 256).		Sustained
145:2-7	Relevance, 403, subsequent remedial measures.		Sustained

ii. Western Sugar's Counter-designations

Page/Line	Objections – Goldtooth	Objections – DSI	Ruling
23:5-17			
24:8-11			
91:21-4			
94:3-95:11			
99:1-10			
104:5-15			
139:23-140:5			

iii. DSI's Counter-designations

Page/Line	Objections – Goldtooth	Objections – Western Sugar	Ruling
139:23-140:5			

C. Kacey Fox

i. Goldtooth's Designations

Page/Line	Objections – Western Sugar	Objections – DSI	Ruling
15:8-12, 14			
15:17-25			
16:1-25			
17:1-7			
17:10-11			
17:13-16			
17:21-25			
18:1			
18:8-25			
19:1-25	19:24-20:3 – Misstates testimony.		Overruled
20:3			
20:14, 17-20	20:14-20 – Hearsay.		Need to see exhibit
23:2-25			
24:4-19			

ii. Western Sugar's Counter-designations

Page/Line	Objections – Goldtooth	Objections – DSI	Ruling
5:15-9:20			
9:23-10:4			
10:6			
10:8-9			
10:11-11:1			
11:3-12:19			
12:22-13:2			
13:4			
13:6			
13:9-14:14			
14:17-25			
15:13			
15:15-16			
17:8-9			
17:12			

Page/Line	Objections – Goldtooth	Objections – DSI	Ruling
17:17-20			
18:2-3			
18:6-7			
20:4-13			
24:25-25:16			
25:19-20			

iii. DSI's Counter-designations

Page/Line	Objections – Goldtooth	Objections – Western Sugar	Ruling
5:8-6:23			
7:5-12:7			
12:23-14:8			
21:14-22			

D. Charles Gibbs

i. Goldtooth's Designations

Page/Line	Objections – Western Sugar	Objections – DSI	Ruling
9:10-22			
18:8-19:2			
19:5-24			
21:1-4			
21:10-21			
24:14-24	Relevance.		Sustained
27:2-22	27:16-22 – Relevance.		Overruled
31:1-10			
32:11-20			
32:21-33:10			
40:20-41:10			
41:25-42:4			
42:5-43:1			
44:2-7			
44:20-24	Relevance.		Need to see exhibit
45:4-18			
46:15-47:20	46:25-47:3 – Hearsay. 47:6-10 – Hearsay.		Sustained Sustained
48:11-49:2	48:15-18 – Hearsay.		Sustained
50:1-6			
51:5-6			
54:2-10			
56:21-57:5			

Page/Line	Objections – Western Sugar	Objections – DSI	Ruling
57:8-58:20			
63:5-24	Hearsay; no personal knowledge.		Sustained
65:19-25			
66:6-11			
68:6-25	Hearsay.		Sustained
69:6-14			
72:7-11			
76:4-23	Hearsay.		Sustained
79:5-11			
79:12-24			
80:7-18			
81:2-8			
82:7-16			
85:8-12	Improper opinion regarding a legal conclusion.		Sustained
86:7-20			
92:2-9			
93:16-24	Colloquy of counsel that should not be played for jury. We do not dispute the accuracy of the transcription of the OSHA recorded statements. The admissibility of those transcripts can be addressed elsewhere.		Sustained
96:1-14	Relevance.		Overruled
97:1-5			
98:5-13			
99:2-8	Relevance.		Sustained
103:9-24	103:9-14 – Hearsay.		Overruled
105:1-106:6	105:1-6 – Relevance.		Sustained

ii. Western Sugar's Counter-designations

Page/Line	Objections – Goldtooth	Objections – DSI	Ruling
37:21-38:7			
39:22-40:19			
41:11-24			
51:7-8			
59:5-62:24			
69:15-21			
70:19-71:9			
84:23-85:7			

Page/Line	Objections – Goldtooth	Objections – DSI	Ruling
93:3-13			

E. Cody Goldtooth**i. Western Sugar’s Designations**

Page/Line	Objections – Goldtooth	Objections – DSI	Ruling
5:14-17			
12:18-25			
14:14-16:23			
18:3-20:25			
23:3-23			
24:19-26:3			
28:5-29:25			
31:19-32:9	Improper hearsay. FRE 801 and 802.		Overruled
33:23-34:13			
34:24-35:18			
36:24-38:17	Speculative, irrelevant.		Overruled
44:1-22	Subject to a prior ruling, irrelevant, misleading, confusing the issues, more prejudicial than probative, and character evidence. FRE 401, 402, 403, and 404.		Sustained as to intoxication, otherwise overruled
50:4-52:5			
53:1-3			
53:18-54:12	Improper opinion and conclusion of a lay witness. FRE 702, 703, and FRCP Rule 26.		Overruled
59:12-63:17	Improper opinion and conclusion of a lay witness. FRE 702, 703, and FRCP Rule 26.		Overruled
64:16-65:3			

ii. DSI’s Counter-designations

Page/Line	Objections – Goldtooth	Objections – Western Sugar	Ruling
16:24-17:10			
21:4-22:2	Speculative.		Overruled

F. Julie Goldtooth

i. Western Sugar's Designations

Page/Line	Objections – Goldtooth	Objections – DSI	Ruling
5:8-11			
6:17-7:3			
17:11-14			
20:17-21:22			
22:22-24:12			
42:2-25			
44:24-45:1	Speculative.		Overruled
50:12-53:9	Speculative. Improper opinion and conclusion of a lay witness. FRE 702, 703, and FRCP Rule 26.		Overruled
56:4-57:14	Irrelevant, misleading, confusing the issues, more prejudicial than probative, and character evidence. FRE 401, 402, 403, and 404.		Overruled
60:3-18	Irrelevant, misleading, confusing the issues, more prejudicial than probative, and character evidence. FRE 401, 402, 403, and 404.		Sustained

G. Perry Goldtooth, Jr.

i. Western Sugar's Designations

Page/Line	Objections – Goldtooth	Objections – DSI	Ruling
6:16-19			
43:20-45:3			
46:21-47:15			

H. Matt Higdon

i. DSI's Designations

Page/Line	Objections – Goldtooth	Objections – Western Sugar	Ruling
5:12-13			
9:22-10:19			
12:10-12:24			
13:2-14:10			
15:4-6			
15:14-23			
17:24-18:18			

Page/Line	Objections – Goldtooth	Objections – Western Sugar	Ruling
19:5-21:9			
22:16-23:1			
23:11-15			
24:2-15			
25:2-24			
27:6-29:6		Relevance.	Overruled
33:19-35:23			
36:25-37:8			
40:11-24			
46:4-22			
48:1-49:10		48:1-4 – Leading; improper lay opinion; opinion on a legal conclusion. 48:18-20 – Leading; improper lay opinion; opinion on a legal conclusion, i.e. violation of an OSHA standard. 48:25-49:3 – Leading; speculation	Sustained Sustained Sustained
51:6-53:22		52:5-10 – Leading; argumentative 52:16-22 – Leading; argumentative 52:25-53:6 – Leading; argumentative.	Sustained Sustained Sustained
54:18-56:6		54:18-22 – Leading; argumentative. 55:2-10 – Leading; argumentative; relevance. 55:17-18 – Leading; argumentative; relevance. 55:23-56:3 – Leading; argumentative; relevance.	Sustained Sustained Sustained Sustained

ii. Western Sugar’s Counter-designations

Page/Line	Objections – Goldtooth	Objections – DSI	Ruling
32:7-33:7			
35:24-36:6		Foundation, assumes facts not in evidence.	Overruled
36:22-24			
38:6-39:8			
40:25-44:9			

I. Andrew Johnson

i. Goldtooth's Designations

Page/Line	Objections – Western Sugar	Objections – DSI	Ruling
5:22-6:5	5:22-6:5 – Relevance, 403, hearsay.		Sustained
6:22-7:11	6:22-7:11 – Relevance, 403, speculation.		Sustained
18:18-25			
24:14-25:13	24:14-25:13 – Hearsay.		Sustained
29:1-12	29:1-12 – Hearsay.		Sustained
34:15-35:13			
38:8-13	38:8-13 – Hearsay.		Sustained
40:24-41:4			
41:9-15			
46:14-17			
48:1-17			
49:9-20			
50:24-51:5			
54:24-55:4			
56:6-15			
59:23-60:2			
62:11-63:9	62:11-63:9 – Calls for Speculation, Foundation.		Sustained
66:20-67:7			
68:5-11			
77:1-78:11	77:4-5 – Remove the objection. 77:13-78:4 – Calls for speculation, not based on facts in evidence.		Sustained
79:17-80:4	79:17 – 80:4 – Argumentative, calls for speculation, foundation, not based on facts in evidence.		Overruled
84:13-20			
86:20-23	86:20-23 – Relevance, hearsay, 403.		Sustained

ii. Western Sugar's Counter-designations

Page/Line	Objections – Goldtooth	Objections – DSI	Ruling
4:5-22			
8:11-14			
10:3-6			
10:15-17			

Page/Line	Objections – Goldtooth	Objections – DSI	Ruling
11:1-16:4			
16:15-24			
19:1-5			
20:9-21			
23:13-24:11			
26:6 – 28:24			
30:3 – 22			
35:15 – 38:6			
40:12-18			
41:5-8			
47:3-8			
47:23-25			
48:18-23			
51:6-52:5			
52:10-12			
52:18-53:11			
55:5-16			
55:19-56:5			
57:10-58:24			
60:3-5			
67:18-68:4			
78:17-79:16			
80:5-8			
83:23-84:12			

iii. DSI’s Counter-designations

Page/Line	Objections – Goldtooth	Objections – Western Sugar	Ruling
35:15-36:1			
37:20-38:6			

J. Dalia Quintero

i. Goldtooth’s Designations

Page/Line	Objections – Western Sugar	Objections – DSI	Ruling
6: 18-25			
62:1-25			
63:1-25			
64:1-25			
65:1-25			
66:1-25	66:10-11 – Remove the objection.		

Page/Line	Objections – Western Sugar	Objections – DSI	Ruling
67:1-25			
68:1-25	68:15-20 – Lacks foundation, argumentative, calls for speculation. 68:21-69:1 – Lacks foundation, calls for speculation.		Sustained Overruled
69:1-25	69:2-11 – Lacks foundation, calls for speculation.		Overruled
70:1-25			
71:1-25			
72:1-25	72:15-19 – Lacks foundation, calls for speculation.		Sustained
73:1-25	73:5 – Remove the objection. 73:23 – Remove the objection.		
74:1-6			

ii. Western Sugar’s Counter-designations

Page/Line	Objections – Goldtooth	Objections – DSI	Ruling
42:7-44:3			
46:8-12			
49:8-51:3			
56:18-21			
74:11-15			

iii. Western Sugar’s Designations

Page/Line	Objections – Goldtooth	Objections – DSI	Ruling
6:18-40:20	Irrelevant, misleading, confusing the issues, more prejudicial than probative, and character evidence. FRE 401, 402, 403, and 404. Speculative.		Overruled as non-specific
42:7-44:3			
46:8-12			
49:8-51:3			
56:18-21			
70:5-72:4	Irrelevant. FRE 401 and 402.		Overruled
74:11-15			

K. John Salway

i. Goldtooth's Designations

Page/Line	Objections – Western Sugar	Objections – DSI	Ruling
8:17-9:8	Relevance, 403.		Overruled
10:10-17			
17:14-19			
20:8-18			
27:11-28:6			
29:10-30:16			
36:20-25			
40:24-41:2			
41:7-13			
43:23-46:9	43:23-44:4 – Foundation, calls for a legal conclusion. 44:5-15 – Foundation, calls for a legal conclusion. 44:16-22 – Foundation, calls for a legal conclusion. 44:23-45:9 – Foundation, calls for a legal conclusion. 45:10 – 18 – Foundation, calls for a legal conclusion. 45:19-46:9 – Foundation, calls for a legal conclusion.		Overruled Sustained Sustained Overruled Overruled Sustained
47:5-14			
48:6-10			
55:16-56:6			
59:19-60:13	59:19 – 60:9 – Foundation, calls for a legal conclusion. 60:10 – 15 – Foundation, calls for a legal conclusion.		Overruled Sustained
62:3-16	62:7-16 – Foundation, calls for a legal conclusion.		Overruled
65:18-67:17	Hearsay, foundation.		Sustained
68:15-69:11			

ii. Western Sugar's Counter-designations

Page/Line	Objections – Goldtooth	Objections – DSI	Ruling
10:1-9			
11:4-11			
11:25-12:10			
12:15-14:21			
18:23-20:5			
26:5-27:10			

Page/Line	Objections – Goldtooth	Objections – DSI	Ruling
28:7-29:9			
30:17-32:9			
56:7-11			
67:21-68:10			

L. Michael Skeans

i. Goldtooth’s Designations

Page/Line	Objections – Western Sugar	Objections – DSI	Ruling
13:9-24			
17:3-18			
28:18-23			
30:18-31:11	30:18-31:11 – Relevance.		Sustained
32:19-33:8			
35:19-25			
36:9-19			
36:23-37:15			
43:15-44:7	43:24-44:7 – Relevance, 403, financial status of a party.		Sustained
47:2-12			
49:8-18	49:8-18 – Relevance, 403, financial status of a party.		Sustained
51:12-52:12			
56:8-18			
56:19-57:12			
59:18-22			
61:7-14			
62:24-64:24	64:11-24 – Relevance.		Overruled
71:13-72:12			
72:21-73:3			
74:21-76:1	74:21-76:1 – Relevance.		Sustained
76:16-24			
78:13-22	78:13-22 – Relevance.		Sustained
79:15-16			
80:20-81:1	80:21-81:1 – Relevance, objections of counsel not evidence.		Sustained
86:4-87:13			
88:3-9			
92:2-8			
93:19-94:9	93:19-94:5 – Relevance, 403, 404; See Motion in Limine to exclude evidence of unrelated		Sustained

Page/Line	Objections – Western Sugar	Objections – DSI	Ruling
	code violations (Filing # 255 and 256). 94:6-9 – Relevance, 403, 404, argumentative, financial status of a party; See Motion in Limine to exclude evidence of unrelated code violations (Filing # Filing # 255 and 256).		Sustained
97:20-98:8	97:20-98:8 – Relevance, 403, financial status of a party; See Motion in Limine to exclude evidence of budget of project (Filing # 255 and 256).		Sustained
98:23-99:7			
100:12-101:9			
103:23-104:11			
105:3-15	105:6-7 – Argumentative, calls for an opinion regarding a legal conclusion.		Overruled
105:21-106:5			
108:16-109:3			
110:23-111:6	110:23-111:3 – Assumes facts not in evidence.		Overruled
113:7-9			
116:12-21			
117:1-118:2			
119:4-13			
120:9-24			
123:17-124:1			
128:6-17			
130:10-131:4			

ii. Western Sugar’s Counter-designations

Page/Line	Objections – Goldtooth	Objections – DSI	Ruling
5:18-19			
13:25-14:5			
36:1-8			
57:13-59:17			
59:23-60:6			
61:15-62:18			
64:25-65:14			
92:9-15			

iii. DSI's Counter-designations

Page/Line	Objections – Goldtooth	Objections – Western Sugar	Ruling
77:1-17			
112:20-113:6			

M. Mark Suhr

i. Goldtooth's Designations

Western Sugar objects to the entirety of Goldtooth's designations of Mark Suhr's deposition. Western Sugar asserts that Mark Suhr will appear and testify at trial and argues his testimony is not a party admission under Federal Rule of Civil Procedure 801(d)(2). The Court sustains this objection to the introduction of deposition testimony in Goldtooth's case-in-chief to the extent Suhr is present at trial and available to testify. Any other objections to the submitted designations are denied without prejudice as moot.

N. Timothy Twombly

i. Western Sugar's Designations

Page/Line	Objections – Goldtooth	Objections – DSI	Ruling
6:21-24			
7:14-16			
7:21-9			
25:19-21	Speculative. Leading question. Lacks foundation.		Overruled
41:16-44:10		Hearsay (43:9-44-10).	Sustained
44:22-47:11		Hearsay (47:6-11).	Sustained
60:15-18			
61:13-63:19		Hearsay, foundation, speculation (61:22-63:19).	Sustained
63:21-64:1		Hearsay, asked and answered.	Overruled
64:25-65:2			
65:12-66:15		Hearsay.	Sustained

ii. DSI's Counter-designations

Page/Line	Objections – Goldtooth	Objections – Western Sugar	Ruling
26:7-21		Irrelevant and cumulative in light of the Court's prior ruling (Doc # 254).	Overruled
27:3-12		Irrelevant and cumulative in light of the Court's prior ruling	Overruled

Page/Line	Objections – Goldtooth	Objections – Western Sugar	Ruling
		(Doc # 254).	
27:25-28:15		Irrelevant and cumulative in light of the Court’s prior ruling (Doc # 254).	Overruled
29:3-15		Irrelevant and cumulative in light of the Court’s prior ruling (Doc # 254).	Overruled
48:3-50:16		Irrelevant and cumulative in light of the Court’s prior ruling (Doc # 254). 48:8-10 – his “assumption” is irrelevant.	Overruled Overruled
53:2-18	Speculative. Improper hearsay. FRE 801 and 802.		Overruled
53:25-56:20		54:15-19 – Improper opinion regarding a legal conclusion; argumentative; relevance. 55:23-25 – Relevance. 56:10-14 – Relevance.	Overruled Overruled Sustained

O. Donovan Yazzie

i. Goldtooth’s Designations

Page/Line	Objections – Western Sugar	Objections – DSI	Ruling
8:22-9:2			
9:15-17			
11:3-12			
13:1-13			
13:24-14:9			
20:7-21:19			
28:18-29:20			
35:14-36:1	35:14-20 – Lacks foundation, calls for speculation. 35:22-3 – Lacks foundation, calls for speculation.		Sustained Sustained
36:8-15			

ii. Western Sugar’s Counter-designations

Page/Line	Objections – Goldtooth	Objections – DSI	Ruling
30:2-34:5			

iii. DSI's Designations

Page/Line	Objections – Goldtooth	Objections – Western Sugar	Ruling
6:16-17			
7:3-4			
7:10-19			
8:1-21		8:1-2; 6-8 – Relevance.	Sustained
9:15-10:4			
11:3-12			
12:22-13:14			
13:24-14:6			
16:5-17:15			
20:21-21:16			
22:19-24			
23:14-24:21		24:3-6; 13-14 – Relevance	Overruled

iv. Western Sugar's Counter-designations

Page/Line	Objections – Goldtooth	Objections – DSI	Ruling
30:2-34:5			
36:10-13			

IT IS SO ORDERED.

Dated this 10th day of January 2025.

BY THE COURT:



Robert F. Rossiter, Jr.
Chief United States District Judge